

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

COREY E. JOHNSON,

Plaintiff,

v.

Civil Action No. 7:20-cv-00582

CANINE OFFICER MCCOWAN, *et al.*,

Defendants.

**PLAINTIFF'S MOTION IN LIMINE
TO BAR DEFENDANTS' "GOOD CHARACTER" EVIDENCE**

Plaintiff, Corey Johnson, by his attorneys, respectfully moves *in limine* to bar Defendants' commendations, awards, complimentary history, promotions, performance reviews, and other "good character" evidence. Plaintiff, through his counsel, discussed with defendants whether they were willing to stipulate that they would not introduce such evidence and they declined to do so.

ARGUMENT

Defendants, either through their fact or expert witnesses, may seek to introduce evidence of their "good character" by reference to prior work-related commendations, awards, complimentary history, promotions, or performance reviews, among other evidence. *See, e.g.*, Kmiecik Report at 55 ("The Commonwealth of Virginia was awarded the Golden Eagle Award and the Lucy Webb Hayes Award by the ACA"); Plaintiff objects to any attempt to interject good character evidence into the trial.

Rule 404(a) could not be clearer that "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the

character or trait.” Fed. R. Evid. 404(a). Evidence of commendations, awards, lack of prior disciplinary incidents, and the like cannot possibly be relevant to an issue in this trial other than to suggest that Defendants conducted themselves as model corrections officials or corrections administrators or model officers. *See, e.g., Zephrine v. Prince George’s County*, No. AW-02-1796, 2007 WL 5445450 at *1 (D. Md. Feb. 1, 2007) (police award was improper “good character” evidence under Rule 404); *see also United States v. Maynard*, No. 2:21-cr-00065, 2021 WL 5161737, at *3 (S.D. W.Va. Nov. 2, 2021) (military honors were improper character evidence); *see also United States v. Candelaria-Silva*, 166 F.3d 19, 35 (1st Cir. 1999) (police officer’s “certificate of good conduct” was improper character evidence and inadmissible under Rule 405).

The evidence is *per se* inadmissible for that purpose.

CONCLUSION

Accordingly, for the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order barring references to Defendants’ commendations, awards, complimentary history, promotions, performance reviews, and other “good character” evidence.

Dated: December 16, 2022

Respectfully submitted,

/s/ Andrew C. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that, on December 16, 2022, I caused the foregoing document to be electronically filed through the Court's CM/ECF system, which caused a notice of electronic filing and copy of the foregoing to be served on all counsel of record.

Respectfully submitted,

/s/ Andrew C. Johnson

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